

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

BDO SEIDMAN, LLP,

Respondent,

and

ROBERT S. CUILLO, GARY ERVIN,
ROBERT ERVIN, TIMOTHY ERVIN,
DSG IRREVOCABLE TRUST, RICHARD
GARMAN AND JOHNNA COATS
CHAND GUPTA (DRG IRREVOCABLE
TRUST), JAI N. GUPTA,
JAI N. GUPTA REVOCABLE TRUST,
RAM GUPTA, SHASHI A. GUPTA,
SHASHI A. GUPTA REVOCABLE TRUST,
BILLY L. "DWAYNE" HAWKINS,
SHAHID KHAN, RAY LANE,
R.K. LOWRY, JR., JOHN P. MOFFITT,
ARLENE NUSSDORF, GLENN NUSSDORF
AND CLAUDINE STRUM, GLENN
NUSSDORF TRUST, STEPHEN AND
ALICIA NUSSDORF, STEPHEN NUSSDORF
TRUST, RUTH NUSSDORF, QUALITY
KING, DH PETERSBURG INVESTMENTS,

Intervenors.

Civil Action No. 02 C 4822

Judge James F. Holderman

FILED

JUN 16 2004

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DOCKETED

JUN 17 2004

MOTION TO INTERVENE

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Robert S. Cuillo, Gary Ervin Robert Ervin, Timothy Ervin, DSG Irrevocable Trust, Richard Garman and Johnna Coats, Chand Gupta, Jai N. Gupta, Jai N. Gupta Revocable Trust, Ram Gupta, Shashi A. Gupta, Shashi A. Gupta Revocable Trust, Billy L. "Dwayne" Hawkins, Shahid Khan, Ray Lane, R.K. Lowry, Jr.,

Petersburg Investments, LLC, (hereafter referred to as "the Intervenor"), by and through their undersigned attorneys, hereby move to intervene in the above captioned proceeding. In support of this motion, the Intervenor shows the Court the following:

1. Intervenor has at various times been a client of the accounting firm BDO Seidman, LLP ("BDO"), and their identities are being revealed to the United States of America and the Internal Revenue Service as a result of this Court's Order dated May 7, 2004. In prior proceedings, the Intervenor was identified on the BDO Privilege Logs as Doe Nos. 32, 45, 46, 61, 98, 114, 115, 142, 143, 144, 153, 180, 189, 216, 219, 220, 282, 326, 327, 335, 356, 399, 404, 442, 497 (some received more than one Doe number) with respect to the assertion of a client identity privilege.

2. By the aforementioned Order of May 7, 2004, this Court directed BDO to notify all of its clients of the current status of this proceeding and ordered any interested parties who intend to assert privileges with respect to any document on the BDO privilege log to move to intervene to assert privileges and file their objection no later than June 16, 2004.

3. The particular documents relating to Intervenor that are pertinent to this matter are identified in the attached Appendix which is organized by item number, and refers to the privilege log previously submitted by BDO.

4. As explained at length in the attached Memorandum of Law in Support of Motion to Intervene, the documents that Intervenor seeks to protect are communications between themselves and BDO that are subject to confidentiality under either Internal Revenue Code § 7525, the attorney-client privilege, or the work product doctrine. They are not confidentiality agreements, consulting agreements, engagement letters, and other such documents, but rather are

in the nature of tax opinion letters involving legal issues as well as drafts of such documents and correspondence relating to the advice rendered or to be rendered by BDO.

5. Intervenorors are entitled to intervene in this proceeding as a matter of right under Federal Rule of Civil Procedure 24(a), because they have an interest in the property and transaction which is the subject of this action, they are so situated that the disposition of this action will as a practical matter impair or impede their ability to protect their interests, and they are not adequately represented by existing parties. Moreover, this application is timely under this Court's Order of May 7, 2004.

6. Alternately, the Intervenorors are entitled to permissively intervene under Rule 24(b) of the Federal Rules of Civil Procedure because they are asserting a claim or defense for which there is a common question of fact and law with the main action.

7. This intervention will not unduly delay or prejudice the adjudication of the rights of the Petitioner or BDO in that the determination of privilege can be made by using the same process as is normally used for such determination after intervention is permitted.

8. Failure to protect the documents in question would produce the disclosure of confidential communications between BDO and the Intervenorors, and they have had at all times an expectation that the material would be kept confidential unless they chose to waive that privilege.

WHEREFORE, Intervenor's pray that this Motion to Intervene be granted in its entirety and that they shall have such other and further relief as is appropriate.

Respectfully submitted,

By: 

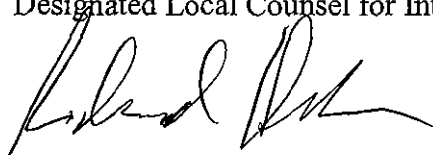
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COUNSEL FOR INTERVENORS

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Designated Local Counsel for Intervenor's



CERTIFICATE OF SERVICE

Richard K. Hellerman, an attorney, certifies that he served a copy of the foregoing Motion to Intervene by causing a true and correct copy thereof to be delivered by messenger to:

United States Attorney's Office
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604
Fax: (312) 353-2067

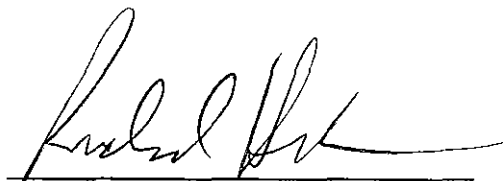
and by facsimile and by Federal Express to:

John A. Lindquist, III
U.S. Department of Justice
Tax Division
555 Fourth Street N.W., Room 7836
Washington, D.C. 20004
Fax: (202) 514-5328

and by Federal Express to:

Michael Hefter
Dewey Ballantine, LLP
1301 Avenue of the Americas
New York, NY 10019

on this 16th day of June, 2004.

A handwritten signature in black ink, appearing to read 'Richard Hellerman', written over a horizontal line.

Richard Hellerman

**SEE CASE
FILE FOR
EXHIBITS**